it was satisfied that the judgment was unfair and unreasonable even though it was not fraudulent. In the course of his judgment at page 408 of the report Lord Esher, M.R. obeserved:

"This court has now been sitting for a long time to administer the law under the Bankruptcy Act of 1883, and we have several times said that, where the debt relied on in the court of bankruptcy is founded on a judgment obtained against a debtor, the court is not bound by that judgment, although it is and must be binding between the parties for any other purpose. We have said that the court will go behind the judgment, and I think that the cases shew that the court will go behind a judgment by consent. I am of the opinion that a judgment obtained by a compromise does not of itself stop the court from going behind it. We have tried to say that the court will go into the whole transaction, because the question is not one of a dispute between the two parties; it is a matter which affect. and materially affect, the rights of all creditors who are not before the court when it has to determine whether a receiving order should or should not be made, which will or may result in the debtor being made a bankrupt."

And then at page 409:

"If the compromise is found to be a reasonable one the court will support the judgment; but if it is found not to be a reasonable compromise, although not fraudulent, then the court will not support the judgment. For instance, I know we have said that though both parties to the compromise knew all the circumstances and agreed to it, yet if the court finds that it was foolish, absurd, and improper, and one that ought not to have been made, they will not bind the whole body of creditors to that compromise. Still more, if the court finds that the compromise was made when one party knew all the circumstances and the other did not, then, even if there be no fraud, the compromise cannot be a fair one."

Applying the principles enunciated in this judgment to the facts of this motion, I am of the opinion that the application is neither irregular nor ill-conceived and if granted would not result in the infringment of any of the provisions of the Bankruptcy Ordinance or the rules made thereunder. The preliminary objection is therefore overruled and I am prepared to hear the arguments on the merits of the application.

Objection overruled.

Solicitors: *Peh Swee Chin; Yeap & Yeap.*

TAN KHENG ANN & ORS. v. THE PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) April 30, 1965]

Penal Code, ss. 34, 149 and 302 — Charge — Murder committed during rioting by detainees under Criminal Law (Temporary Provisions) Ordinance — Common intention and common object — Conjunctive allegations in charges — Whether bad in law.

Criminal Procedure — Special jury — Prosecution obtaining ex-parte order for special jury — Validity of order — Rules of natural justice — Special jury summoned and empanelled — Discharge of — Whether ex-parte order spent — New jury summoned and empanelled — Validity of — Criminal Procedure Code (Cap. 132), ss. 180, 228(2).

Criminal Procedure — Mode of trial — Separate trials — "Group" trials — Single transaction — Interests of justice — Interests of accused — Judge's discretion.

Evidence — Accomplice vel non — Interested witnesses — Corroboration — Implicating accused in a material particular — Non-direction — Effect of.

Courts of Judicature Act, 1964, s. 60(1) — Applicability.

On July 12, 1963 at about 1 p.m., a number of criminal law detainees, (estimated at between 70 to 90) on the penal settlement of Pulau Senang armed themselves with hoes, pieces of iron, parangs and bottles made a series of attacks on the administration buildings of the settlement, and proceeded to burn down most of the buildings of the settlement, break up petrol pumps, loot property, burn records and destroy machinery. In the course of these proceedings, the settlement superintendent and 3 others were killed and a number of the supervisory staff attacked and injured. Consequently 64 of the detainees were taken into custody, none of them offering any resistance, by a force of armed police who had come from Singapore in response to a radio telephone message sent by the settlement superintendent shortly before his death. In the event, a prosecution was brought against the said detainees and they were eventually committed for trial on 3 charges of murder under sections 302 and 149 of the Penal Code. Upon their committal, the prosecution, applied for and obtained an order *ex parte* under section 180 of the Criminal Procedure Code for a special jury to be summoned to try the case. A special jury was accordingly summoned and subsequently empanelled when the case came on for trial. Counsel for the prosecution then announced that he did not propose to proceed against 5 of the accused at that stage and those 5 were then stood down. The remaining 59 accused were then charged on all 3 charges and all claimed trial. The jury was sworn and the trial adjourned.

At the adjourned hearing it was discovered that one of the accused in the dock was one of those who should have been stood down at the first hearing of the trial and one of those stood down on that day should have been in the dock. The correct accused was then put in the dock and charged and claimed trial. The judge, then ruled that that accused could not be tried by the jury which had already been sworn because that would deprive him of his rights of challenge in respect of the jury. The jury was accordingly discharged, and the accused were remanded till the next Assizes. At the next Assizes the accused were again charged on all 3 charges and all claimed trial. The jury was then sworn and the trial proceeded. At the conclusion of the trial the jury found 18 of the accused guilty on all 3 charges of murder and the remaining 40 (one of the accused was discharged in the course of the trial) not guilty on all 3 charges of murder. These 18 persons convicted for murder appealed against their convictions.

On appeal it was argued *inter alia* that (i) the order for a special jury was invalid because it had been obtained *ex parte* and that therefore the trial was rendered a nullity *ab initio;* (ii) the accused had suffered prejudice for they would have felt greater confidence in a trial by a common jury and they had been deprived of the opportunity of being heard; (iii) even if the *ex parte* order was good when the first jury was empanelled, that order was as it were, spent and a second order which was not obtained would have been necessary for the special jury before the trial ultimately commenced; (iv) the charges were bad in law because if constructive liability was to be imputed to the accused it should have been by reason of section 34 and not section 149 of the Penal Code; (v) the charges were bad in law because "it averred the murder of one person in two different sets of circumstances"; (vi) the defence were

prejudiced by particulars of the common objects of the unlawful assembly being supplied in the form of a list of persons rather than by amendment of the charges; (vii) the trial judge was wrong in law in rejecting the defence applications that there should be separate trials in respect of each of the 3 charges or that they should be tried in groups of unspecified size and consequently there was a miscarriage of justice; (viii) the whole trial proceeded on the basis that the appellants were persons of bad character; (ix) the case was put to the jury on the basis that there was a single assembly with a single combination of common objects as averred in the charges and that this was wrong; (x) the trial judge's attitude to the question of the credibility of the prosecution witnesses was based on the assumption that they were worthy of the utmost respect and that the trial judge failed to give proper directions to the jury with regard to the evidence of such persons and in particular with regard to 2 witnesses who were alleged to be accomplices in the full sense.

Held: (1) the order for a special jury made by the judge under section 180 of the Criminal Procedure Code on the *ex parte* application, supported by affidavit of the Public Prosecutor, was not invalid so as to render the trial a nullity because the said judge had jurisdiction and there were grounds on which the jurisdiction could be exercised. Further, there had been no disobedience to an express provision as to the mode of trial;

(2) as counsel for the accused had knowledge of the *ex parte* order before the jury was selected and no protest was made by any of them, the court was compelled to the conclusion that even if natural justice did enter into the question there was no failure of natural justice;

(3) the order for the special jury was not spent when the first jury was summoned because section 180 speaks of a special jury being summoned to try "any case" and on the ordinary canons of construction this meant as many successive juries as may be required by the Code to complete the trial of the case in question;

(4) where the common object of the alleged unlawful assembly and the common intention of its members were the same, the prosecution may proceed either by virtue of section 34 or by virtue of section 149 of the Penal Code. The consideration that in the event they proceeded under the latter section cannot in itself be said to have prejudiced the accused in any way or to vitiate the convictions;

(5) here each of the charges alleged that the accused was a member of an unlawful assembly whose common objects were to cause death and destruction and that in the prosecution of these common objects murder was committed which was an offence which the members of the assembly knew to be likely to be committed in prosecution of their common objects. The circumstances which in the section are alternative were in the charges alleged conjunctively and there was no reason why this should not have been done;

(6) as all the accused had claimed trial on the original charges it was ridiculous to suppose that if the charges had been amended as suggested any one of them would have altered his plea and pleaded guilty. Again as no application was made by any of the defending counsel to have any of the witnesses recalled the argument was without substance;

(7) the question of separate trials in respect of each of the 3 charges or in "groups" of unspecified size were matters for the exercise of a trial judge's discretion and in this case he exercised his discretion rightly as the whole transaction was in truth a single one, so much of each charge as alleged participation in an unlawful assembly was in the case of each charge the same and it was not only in the interests of justice but in the interests of the accused that the 3 charges should be tried together;

(8) though the jury regarded the accused as persons of bad character there was nothing to show that that in any way deterred the jury from doing their duty to judge them on the evidence alone. The fact that more of the accused were acquitted than were convicted was reasonably conclusive of the fact that the jury not only knew their duty but they did it;

(9) in the present case having regard to the evidence it was clearly in the interests of justice that the jury should have been asked to consider the whole affair on the basis of it being a single transaction. It was for them to say whether there was an assembly with the common unlawful objects averred by the prosecution. If they were satisfied that there was such an unlawful assembly it was then for them to say in the case of each accused whether they were satisfied that at the material time he was a member of it;

(10) as regards the two putative accomplices the trial judge rightly left the question of "accomplice *vel non*" to the jury. As regards witnesses who had previous criminal convictions or whose credibility had been attacked on individual grounds the trial judge reminded the jury of the grounds on which the evidence had been attacked as he discussed the evidence of each individual witness. There was no fault in the direction of the trial judge to the jury except that in likening the evidence of such witnesses of the evidence of an accomplice he said it must be tested by "reference to other independent evidence" without adding the usual words of the formula "implicating the accused in a material particular", but in any event even if the judge's direction on this point be wrong this was clearly a case where the proviso to section 60(1) of the Courts of Judicature Act, 1964, should be applied as it was a case where no reasonable jury could have failed to convict the appellants.

[**Editorial Note:** The appellants sought leave to appeal to His Majesty the Yang di-Pertuan Agong but leave was refused by the Federal Court. Their application to the Judicial Committee of the Privy Council was also refused. Their Lordships of the Judicial Committee gave no reasons in refusing special leave to appeal.]

Cases referred to:—

(1) *Lee Ah Cheong* v. *R.* [1958] M.L.J. 242.

(2) *Subramania Iyer* v. *King-Emperor* 28 I.A. 257, 263.

(3) *R.* v. *North, Ex parte Oakey* [1927] 1 K.B. 491, 498.

(4) *In re Hammersmith Rent-charge* 4 Ex. 87.

(5) *R.* v. *Poole* 15 Cox C.C. 368.

(6) *Francis* v. *Public Prosecutor* [1960] M.L.J. 40.

(7) *Barendra Kumar Ghosh* v. *The King-Emperor* 52 I.A. 40, 52.

(8) *R.* v. *Middlehurst* 1 Burr. 399, 400.

(9) *Gibbins and Proctor* 13 Cr. App. R. 134, 136.

(10) *Yuill* v. *Yuill* [1945] P. 15.

(11) *R.* v. *Clewer* (1953), 37 Cr. App. R. 37.

(12) *Jones* v. *National Coal Board* [1957] 2 Q.B. 55.

(13) *R.* v. *Hanratty* [1962] Crim. L.R. 410.

(14) *Sukha* v. *State Rajasthan* A.I.R. 1956 S.C. 513, 518.

(15) *Davies* v. *Director of Public Prosecutions* [1954] A.C. 378, 402.

(16) *R.* v. *Prater* (1960), 44 Cr. App. 83, 86.

(17) *Stirland* v. *Director of Public Prosecutions* 30 Cr. App. R. 40, 46; [1944] 2 All E.R. 13 at p. 15.

(18) *R.* v. *Trigg* (1963), 47 Cr. App. R. 94, 101.

(19) *Bereng Griffith Lerotholi* v. *The King* [1950] A.C. 11, 22.

FEDERAL COURT.

David Marshall (*G. Abisheganaden* with him) for the appellants.

Francis T. Seow (Senior Crown Counsel) (*K. S. Rajah* (Deputy Public Prosecutor) with him) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This appeal arises from a criminal trial which by reason of its length, the number of persons involved and the horror of the events to which it related is probably unparalleled in the legal history of this country.

The events which are in question occurred in the early afternoon of 12th July, 1963, on Pulau Senang, a small island some fifteen miles from the main island of Singapore which was being used by the then Government of Singapore in connection with an interesting scheme it had devised for transmogrifying persons thought to be dedicated to a life of crime into useful and virtuous citizens. We are not concerned with the merits of that scheme or to speculate whether some aspects of it may merit a modest place in the history of human folly. Nor is it any concern of ours to examine the legality of some of the things that were done in pursuance of it. What does concern us is the state of affairs which in fact prevailed at and prior to 12th July, 1963.

In the year 1955 the then Singapore Legislature passed the Criminal Law (Temporary Provisions) Ordinance and in 1959 that Ordinance was amended by the addition of a provision (section 47) whereby the appropriate Minister may order any person who, he is satisfied, has "been associated with activities of a criminal nature" to be detained if such detention is necessary in the interests of public safety, peace and good order. In the first place the period of detention is for a year but, subject to certain safeguards, it can be prolonged indefinitely.

At first the persons detained under these provisions, mainly members of so-called "secret societies", were detained in the prison at Changi but after some time it was found that this imposed an undue tax on the available accommodation and also it was thought that something more than was possible in a closed prison should be done with a view to remedying the faults of character from which these persons suffered. Accordingly in 1960 it was decided to set up a settlement of Pulau Senang, a thitherto uninhabited island covered with virgin vegetation, where with less disciplinary control than was thought to be necessary in a prison they might by their own labours construct a well laid out modern settlement the contemplation of which would give rise to sentiments of pride of achievement which would illustrate and confirm them in the habits of honest toil which they would, it was hoped, have in the meantime acquired.

A prison officer named Dutton, who would appear to have been a person of enthusiasm and honesty of purpose, was appointed to be the first superintendent of this establishment and on 18th May, 1960, he landed on the island with a small party of detainees.

During the next three years the number of detainees on the island was gradually increased to about 320. Much of the jungle was cleared. A jetty and roads were constructed. Dormitories, workshops, offices and so forth were built. Livestock were brought to the island and vegetable gardens and playing fields were laid out. The wilderness blossomed like the proverbial rose and became a place of resort to be exhibited with pride to philanthropically-minded persons interested in penal reform.

The general system of regeneration of which the island was a part was that when a man was first detained he was kept in Changi prison for about a year and then if he shewed signs of reformation he was sent to Pulau Senang. If he misbehaved there he was sent back to Changi prison. If, on the other hand, he was thought to be shewing signs of moral improvement he was then sent to an organisation known as the Works Brigade from which after further good behaviour he was released if and when he could find steady employment. Many of the men who passed through this Work Brigade were given employment in the prisons department and were employed as supervisory staff on Pulau Senang under the name of settlement attendants.

Apart from these settlement attendants the staff of the establishment consisted of Dutton, the superintendent, and four or five prison officers and trade instructors. There were also a few long sentence prisoners working as skilled tradesmen and clerks. One feature of the supervisory arrangements was that there were no firearms on the island and it is, at the lowest, possible that had there been firearms available the present proceedings might not have been necessary.

It is no concern of this court to express any views as to the merits of the experiment of which the settlement was a part or the way in which it was conducted; it is, however, pertinent to observe that on the evidence at the trial the detainees were not badly treated. They were, of course, deprived of their liberty in the sense

that they could not leave the island and there was an element of uncertainty regarding the period of their detention which depended on the recommendations of a committee with apparently very extensive powers. At times, too, a few of them had to work irregular hours when engaged on the construction of a jetty, a work which depended on the state of the tide.

On the other hand the hours of labour were not by ordinary standards excessive, the food by prison standards (which are high) would appear to have been neither bad nor inadequate, supervision was slightly exercised and there were many facilities for games and other forms of recreation, including a cinema. Moreover, the detainees were taken on monthly visits to the main island where they might be visited by their friends and relatives and have access, if they wished, to their legal advisers.

Such was the picture given by the prosecution evidence at the trial and it was not contradicted. Not one of the fifty-nine accused gave evidence to suggest that he or any other detainee was treated in a way which would in any way lessen a normal individual's power of exercising self control.

Prior to 12th July, 1963, however, there were indications that at least some of the detainees were discontented with their treatment. That is a matter which will, no doubt, be examined by another tribunal in another place, it does not affect the present proceedings.

But a few minutes after 1 o'clock on 12th July, 1963, the dreadful episode with which we are concerned commenced. A number of the detainees, variously estimated at between seventy and ninety, armed themselves with hoes, pieces of iron, parangs and bottles (of which some 1,600 were thrown) and make a series of attacks, which appeared to be concerted, on the administration buildings of the settlement shouting: "Beat, kill, burn!" The exact sequence of events is almost impossible to expiscate from the evidence but it is clear that after a certain amount of resistance by the supervisory staff, who were without firearms, the persons involved proceeded to burn down most of the buildings of the settlement, to break up petrol pumps, to loot property, to burn records, to destroy machinery including the electric generator which provided power for the siren which was provided as an alarm signal. In the course of these proceedings a number of the supervisory staff were attacked and injured. And in particular Dutton and three others were hacked to death with parangs; in the case of Dutton the body, whether or not life was extinct at the time is not clear, had petrol poured on it and was set on fire.

Later some of those concerned left the island in a boat in the direction of Indonesia but were captured by police and customs launches. The others, their purpose apparently accomplished and all resistance being at an end, retired to the shade of a tree where they rested from their horrid labours and sang songs apparently of triumph. Dutton was dead. The stars in their courses had fought against Sisera. There they were found and taken into custody, without offering resistance, by a force of armed police who had come from Singapore in response to a radio telephone message sent by Dutton shortly before his death.

The whole episode lasted less than an hour. In that time Pulau Senang had become "Pulau Mati".

In the event it was decided to prosecute the persons who had taken part in these events in respect of the killing of Dutton and two of the prison officers named Arumugam Veerasingham ("Singham" for short) and Tan Kok Hian and to impute criminal responsibility for the murder of each of these three persons to all the accused by reason of section 149 of the Penal Code. Accordingly a prosecution was commenced against sixty-four of the detainees and these were eventually committed for trial on three charges. The first of these charges read as follows:—

"You are charged at the instance of the State Advocate-General as Public Prosecutor, in the name of HIS MAJESTY the YANG DI-PERTUAN AGONG and the charge against you is:—

YOU

1. Tan Kheng Ann @ Robert @ Robert Black @ Ang Chuar

. . . . . [and 63 others] . . . . . .

On or about the 12th day of July, 1963, at about 1.15 p.m. at the Pulau Senang Settlement, Singapore were members of an unlawful assembly whose common objects were to cause the deaths of 1. Daniel Stanley Dutton, 2. Arumugam Veerasingham, 3. Tan Kok Hian, 4. Wang Loke Hai alias Cartoon, 5. Chia Teck Whee and others and to cause the destruction of the said Settlement and that while you were members of that assembly one or more members thereof in the prosecution of the common objects of such assembly committed murder by causing the death of the said Daniel Stanley Dutton, an offence which the members of the assembly knew to be likely to be committed in the prosecution of the common objects of the assembly and you have by virtue of section 149 of the Penal Code Chapter 119 committed an offence punishable under section 302 of the said Penal Code."

The second and third charges were in the same terms except that the names of Singham and Tan Kok Hian respectively replaced the name of Dutton as the person murdered.

The case came on for trial on 4th November, 1963, and counsel for the prosecution then announced that he did not propose to proceed against five of the accused at that stage and these five were then stood down. Counsel for the accused then applied for separate trials in

respect of each of the three charges. This was refused and the remaining fifty-nine accused were then charged on all three charges and all claimed trial. The jury was sworn and the trial was adjourned to 6th November, 1963.

On 6th November, 1963, it was discovered that one of the accused in the dock was one of those who should have been stood down on 4th November and one of those stood down on that day should have been in the dock. The correct person was then put in the dock and charged and claimed trial. The judge, however, held that he could not be tried by the jury which had already been sworn because this would deprive him of his rights of challenge in respect of the jury. The jury was accordingly discharged and the accused were remanded till the next assizes.

On 18th November, 1963, the case again came on for trial and the accused were again charged on all three charges and all claimed trial. An application was then made for separate trials in respect of each of the accused or alternatively that they should be tried in groups. This was refused, the jury were sworn and the trial proceeded.

The trial lasted for sixty-four days spread over a period of almost four months. Seventy-eight witnesses gave evidence for the prosecution. Fourteen of the accused persons (including two of the present appellants) gave evidence on their own behalf; one of the accused (not one of the present appellants) made a statement from the dock; nine witnesses were called for the defence, though their evidence did not affect the case as regards the present appellants.

The judge summed up to the jury in a charge which lasted sixteen hours and ran to some 100,000 words. The jury retired for twenty-eight hours and then brought in their verdicts as to fifty-eight of the accused persons, the fifty-ninth (No: 45) having been discharged in the course of the trial. They found eighteen of the accused guilty on all three charges of murder, in the case of fifteen of them unanimously on all charges and in the case of three of them by a majority on each charge. They found the remaining forty not guilty on all three charges of murder. Of these, eleven were found not guilty of any offence, eleven were found guilty of riot in contravention of section 147 of the Penal Code and eighteen of rioting with deadly weapons in contravention of section 148.

The judge accepted these verdicts. Those accused who were found not guilty of any offence were discharged. Those found guilty under sections 147 or 148 were sentenced to terms of imprisonment. The eighteen accused found guilty of murder were sentenced to death.

These eighteen persons convicted for murder have now appealed against their convictions.

The convictions have been attacked on a very great number of grounds. Some of these are of substance and others are very trivial and it is difficult to deal with them in any very systematic sort of way. They can be most conveniently dealt with under four heads:—

A. The mode of trial.

B. The charges.

C. The trial.

D. The summing up.

A. The Mode of Trial.

On 26th October, 1963, after the accused had been committed for trial, the Public Prosecutor made an application to a judge under section 180 of the Criminal Procedure Code for an order for a special jury to be summoned to try the case. That application was supported by an affidavit setting out that the case was one of gravity and complexity and that it was accordingly desirable that it should be tried by special jury. Notice of the application was not served on any of the accused, and on 28th October, 1963, a judge heard it *ex parte* and made an order as prayed.

In accordance with that order a special jury was empanelled when the case came on for trial on 4th November, 1963. In the course of discussion before us it was said that the number of special jurors actually summoned on this occasion and again later was seventy and not sixteen as provided for section 228(2) of the Criminal Procedure Code. This could, however, not be anything more than an irregularity and as it could not have occasioned any failure of justice it could not affect the validity of the trial or its result in any way.

On 6th November, 1963, in circumstances which have been described, the jury empanelled on 4th November had to be discharged and the case was adjourned.

On 18th November, 1963, the case came on again for trial. In the meantime a fresh panel of special jurors had been summoned. Before the jury was chosen, however, prosecuting counsel produced the judge's order of 28th October, 1963, relating to the summoning of a special jury to try the case and said he thought it ought to be on record.

On that the following interchange took place:—

"*Mr. Ball*: May it please your Lordship, I have not been supplied with a copy of the order, nor have my clients been supplied in these proceedings. I would like to have that on record.

His Lordship: I assume that is the application for a special jury?

Mr. Ball: I assume it was.

Crown Counsel: That is correct.

His Lordship: You have made the application in the proper way, presumably, and have an order from a High Court judge?

Crown Counsel: Yes, I have."

Nothing more was said by Mr. Ball who was appearing for forty of the accused and nothing at all was said by any of the other defending counsel. After some other matters had been dealt with the jurors who were standing by were called to the book and after fourteen of them had been challenged a jury were finally chosen, one of whom was excused and replaced by another from those in attendance. The jury were sworn and the trial proceeded.

Before us (and this is one of the principal grounds of appeal) it has been contended that the order for a special jury was invalid because it had been obtained *ex parte* and that therefore the trial of the appellants and the other accused by a jury empanelled in accordance with it was "rendered a nullity *ab initio*". It was argued that the accused had suffered prejudice for they would have felt greater confidence in trial by a common jury and they had been deprived of the opportunity of being heard to that effect by the judge who made the order who might or might not, had he heard them, have taken the view that the interests of justice required that he should give effect to their views. It is common ground that if the contention that the order is invalid be correct that is the end of the matter, the trial was a nullity and the convictions must be quashed and a new trial ordered (see *Lee Ah Cheong* v. *Reg.*[1]).

The Criminal Procedure Code in force in Singapore provides for two types of jury, a common jury and a special jury. From time to time a list of persons qualified to serve as jurors is drawn up by the sheriff and, prior to 16th September, 1963, was settled by the Council of Ministers; a number of persons named in this list are marked off as special jurors. The Code does not prescribe the qualifications of such special jurors but they are said to be "persons having been selected by reason of their possessing superior qualifications in respect of property, character, education, or persons of a certain station in society" (see *Mallal's* Criminal Procedure, 4th Ed., p. 292).

By section 178 of the Code all trials of capital charges are required to be by jury. The normal method of trial is by a common jury. Section 180 of the Code, however, provides that:—

> "The Public Prosecutor or the accused may apply to any judge of the High Court for an order requiring a special jury to be summoned to try any case before the court and the judge shall, if he considers such application just and reasonable, make such order accordingly."

It was under that section that the application for a special jury was made in the present case.

Putting aside for the moment any question of natural justice, it will be observed that the section says that either the Public Prosecutor or the accused person may make an application under it and nothing is said which in terms requires notice of such application to be given to anybody. Nor is there any general provision elsewhere in the Code which requires notice of such an application. Moreover the section itself is to be compared with section 176 which enables the High Court to transfer cases to and from itself and provides that either the accused or the Public Prosecutor may make application for such a transfer but requires in terms that when an application is made by an accused person he must give the Public Prosecutor notice in writing whereas no such notice is required to be given where the application is made by the Public Prosecutor.

The position thus is that there are two conditions which must be fulfilled before a judge can make an order for a special jury under section 180. There must be an application, which may be by either the Public Prosecutor or the accused, and the judge must consider such application to be "just and reasonable". In the present case there was an application and there was material, that is to say the supporting affidavit which would support the exercise of the judge's discretion in saying that the application was "just and reasonable". In the circumstances there was both jurisdiction and grounds on which the jurisdiction could be exercised and on the face of it it is not possible to say that what was done was a nullity in the sense that it was done either without jurisdiction or without material on which the judicial discretion could be exercised. Moreover, there was no question of any "disobedience to an express provision as to a mode of trial" (see *Subramania Iyer* v. *King-Emperor* [2]).

On all this it is difficult to see on what grounds an order under section 180 can be said to be a nullity on the ground only that it has been obtained *ex parte*. It may be of the nature of an order *nisi* that an accused person may seek to have set aside, but that is a different question. Some support for this view, if support is needed, is to be found in a passage in *Short and Mellor's* "Crown Office Practice" (2nd Ed. at p. 113) from which it would appear that prior to the abolition of special juries in England a special

jury could in certain circumstances be had for the trial of a criminal case on an *ex parte* application by either side.

It has been argued, however, that irrespective of the wording of the Code natural justice demanded that the accused persons should have had notice of the application and an opportunity of being heard, if they so wished, in opposition of it and that because this has not been done there has been such a contravention of the maxim *"audi alteram partem"* as to render the order made a nullity. This rule of so-called natural justice, in so far as it is part of the law of England, was stated by Bankes L.J. in the case of *Rex* v. *North, Ex parte Oakey* [3] by quoting the following passage from *Broom's* "Legal Maxims" (now 10th Ed., p. 65) :—

> "It has long been a received rule that no one is to be condemned, punished, or deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard."

It is to be observed, however, that *Broom* concludes his discussion of the topic, from which the foregoing is taken, with the following passage (at p. 68) :—

> "the rule, which is one of elementary justice, only requires that a man shall not be subject to final judgment or to punishment without an opportunity of being heard."

The authority for this statement is said to be the case of *In Re Hammersmith Rent-charge.* [4] There it was held that an order for a jury to assess arrears of rent-charge under the Tithe Commutation Act, 1836, could be made on an *ex parte* application to a judge. Alderson B. said (at p. 95) :—

> "the remedy of the party affected by the proceeding is by an application to the judge or the court to rescind or qualify the original order."

To our mind that is the position here. It is not the case here that the trial went on without counsel for the accused becoming aware of the existence of the judge's order or that, on becoming aware of the order, counsel asked for and was refused any opportunity to attempt to have it set aside. The facts are that the order did come to the knowledge of counsel for the accused before the jury were selected, that is to say before it was carried into effect and that when it did come to the knowledge of counsel no protest was made by any of them; nothing was said by way of asking for an adjournment to deal with the matter. Indeed not a word was said. In the circumstances we are compelled to the conclusion that even if natural justice did enter into the question there was no failure of natural justice.

In our view this ground of appeal is without substance.

Another point was raised in connection with the matter of the order for the special jury but this was not very seriously pressed. It was said that even if the order of 28th October, 1963, was good then when the first jury was empanelled on 4th November, 1963 (that is the jury which was discharged on 6th November, 1963) that order was, as it were, spent and a second order, which was not obtained, would have been necessary for the special jury before which the trial ultimately commenced on 18th November. This point, too, is without substance. It is unnecessary to relate the various circumstances envisaged by the Code in which a jury may be discharged and replaced by another. Section 180 speaks of a special jury being summoned to try "any case" and on the ordinary canons of construction this clearly means as many successive juries as may be required by the Code to complete the trial of the case in question. It may be added here that the view that the order was not spent when the first jury was summoned finds support in the case of *Reg.* v. *Poole.* [5]

B. The Charges.

In the first place it was said that these were bad in law because if constructive liability was to be imputed to the accused it should have been by reason of section 34 and not section 149 of the Penal Code. It is not necessary here to quote at length what was said by the former Court of Appeal of the Federation regarding sections 34 and 149 in the case of *Francis* v. *Public Prosecutor* [6] beyond repeating that the "common intention" of section 34 and the "common object" of section 149 may or may not mean different things according to the facts of the individual case. As was said by Lord Sumner in the case of *Barendra Kumar Ghosh* v. *The King-Emperor* [7] the two sections "have a certain resemblance and may to some extent overlap".

Here it was the case for the prosecution that the common object of the alleged unlawful assembly and the common intention of its members were the same, that is to say to kill and to destroy, and in the circumstance it was open to the prosecution to proceed either by virtue of section 34 or by virtue of section 149. The consideration that in the event they proceeded under the latter section cannot in itself be said to have prejudiced the accused in any way or to vitiate the convictions.

Then it was said that each of the charges was "bad in law" because "it averred the murder of one person in two different sets of circumstances". This arises in this way. Section 149 says that a member of an unlawful assembly is guilty of any offence that is committed by any member of the assembly in prosecution of the common object of the assembly *or* is such that he knew to be likely to be committed in prosecution

of the common object. Here in each of the charges the allegation was that each of the accused was a member of an unlawful assembly whose common objects were to cause death and destruction *and* that in the prosecution of these common objects murder was committed which was an offence which the members of the assembly knew to be likely to be committed in prosecution of their common objects. It is thus clear that circumstances which in the section are alternative were in the charges alleged conjunctively. There was, however, no reason why this should not be done. As was said by Lord Mansfield in the case of *Rex* v. *Middlehurst*:—[8]

"Upon indictments, it has been so determined, 'that an alternative charge is not good;' as 'forged or caused to be forged:' though one only need be proved, if laid conjunctively, (as 'forged and caused to be forged'). But I do not see the reason of it: the substance is exactly the same; the defendant must come prepared against both. And it makes no difference to him, in any respect."

At this stage it will be convenient to deal with one other matter regarding the charges of which complaint has been made. Each of the charges alleged that the common objects of the unlawful assembly were to cause the deaths of five named persons "and others". In his opening address counsel for the prosecution made it clear that by the expression "and others" it was intended to refer to all the settlement staff who were on duty on 12th July and to a number of the detainees thought to be sympathetic with the authorities including suspected informers. On the eighth day of the trial, however, one of the defence counsel with the support of the others asked that the defence be furnished with particulars of the persons in question. In the event the judge refused to order any amendment of the charges but directed that the prosecution should supply the defence with a list of the names of the persons in question. This was done and a list of twenty-four names was delivered to each of the counsel for the defence. Later, but prior to the summing-up, this list was also handed to the jury.

The complaint here would seem to be that the defence were in some way prejudiced by particulars being supplied in this way rather than by amendment of the charges. It is said that had the charges been formally amended (and this could have been done) then by reason of sections 156 and 160 of the Criminal Procedure Code the accused would have been given an opportunity to plead afresh to the amended charges and to have prosecution witnesses, of whom eight had already given evidence, recalled for cross-examination.

The complaint is without substance. All the accused had claimed trial on the original charges and it is frankly ridiculous to suppose that if the charges had been amended as suggested any one of them would have altered his plea and pleaded guilty. Again no application was made by any of the defending counsel to have any of the witnesses who had already given evidence recalled. Had there been such an application and had it been refused the position would have called for consideration, but there was no such application.

Returning to the grounds on which the basis on which the trial commenced has been attacked, complaint was made of the rejection by the trial judge of the defence applications that there should be separate trials in respect of each of the three charges and, when that was rejected, that each of the accused should be tried separately, or, if this was not granted, they should be tried in "groups" of unspecified size.

Both these questions were matters for exercise of his judicial discretion by the judge (see *Gibbins and Proctor* [9]) but it has been urged upon us that he exercised his discretion wrongly and that in consequence there has been a miscarriage of justice.

The point that the three charges should be tried separately was not very seriously pressed and is indeed without substance. The whole transaction was in truth a single one, so much of each charge as alleged participation in an unlawful assembly was in the case of each charge the same and it was not only in the interests of justice but in the interests of the accused (particularly those who were ultimately acquitted) that the three charges should be tried together.

As regards the question of trying all the accused together, what was first asked for was that each of the accused should be tried separately. It is true that when the judge shewed himself averse to this course some suggestion was made that they should be tried in "groups" though no suggestion was made of the principles on which such a division should be made.

Now it is difficult to see how the holding of 59 (or any lesser number of) separate trials could possibly have been of any advantage either to the interests of justice or the interests of any individual accused. Each of the individual trials would have been very lengthy; by far the greater part of the evidence would have had to be repeated at each trial for in each case it would have been necessary to produce all the available evidence as to the episode as a whole. There would certainly have been less time devoted to the cross-examination of the prosecution witnesses for there would have only been one defence counsel engaged (instead of eight) and this might also have reduced any possibility of confusion as to the evidence, a state of affairs which would not necessarily, or even probably, have

been to the interests of any individual accused. Moreover it is to be remembered that it was no part of the defence of any individual accused to cast any blame on any other accused.

Again it is difficult to imagine how in a place like Singapore with a small population, a small number of judges and a limited jury list the last of the series of proposed individual trials which would have continued in all probability for well over a year could have been anything but a caricature of justice. How could a jury have been found who did not from reading the newspapers and talking with their friends know all about the case and be free from preconceived opinions? How could the evidence of a prosecution witness giving the same evidence for the fifty-ninth time and who had been cross-examined on it on fifty-eight previous occasions be anything but a travesty? And how would justice be seen to be done had different results ensued from different judges and different juries dealing with the same matters in different ways?

In all the circumstances we can see nothing to shew that the judge exercised his discretion in this matter in a way that would justify this court in interfering. Indeed (though this is unnecessary) we would express the view that he exercised his discretion rightly. The whole transaction, however confused the happenings to which the evidence related, was essentially a single one and in its essence not a very complex one. It was not a fraud case involving lengthy examination of accounts and it was not complicated by the addition of any charge of conspiracy. Admittedly questions of magnitude and importance and difficulty were involved. But, given the regrettable but unavoidable factor of human fallibility, in our view the best available tribunal was a single careful judge and a single careful and conscientious jury who would apply the same standards of care and conscientiousness to the case as a whole and to the various questions of individual responsibility involved. To have the whole matter tried by such a tribunal was the only way to avoid the danger, in our view a real one, that in practice different individuals among the accused would have their responsibility judged by different standards.

In our view there was a trial by a tribunal of this nature.

The judge's summing-up will be dealt with later. As regards the jury there can be no doubt that they carefully and conscientiously applied the law as it was stated to them to the evidence to which they had listened in the case of each individual accused. The very nature of their verdicts shews that.

C. The Trial.

We now pass to a number of grounds of appeal, most of them of little if any substance, relating to the conduct of the trial.

Before considering these in detail it is to be observed that while all of them seek to make out some lack of fairness or prejudice no attempt was made to shew how in any case the eighteen appellants who were convicted for murder were prejudiced or could have been prejudiced to any greater extent than the forty accused persons whom the jury found not guilty of that offence. That consideration alone deprives these complaints of much of their force.

To proceed, it was said that the whole trial proceeded on the basis that the appellants (and of course their co-accused who were acquitted) were persons of bad character. One witness was allowed to use the expression, although no exception was taken to this at the time, "the scum of Singapore". By that expression, which perhaps erred in taste rather than accuracy, he referred and was understood to refer to all the persons in the dock, most of the prosecution witnesses and indeed the entire involuntary population of Pulau Senang at the material time. There were frequent references to secret society associations. All the prisoners in the dock were clothed in prison dress which, apart from being a distinguishing form of dress, involved the exposure of the tattoo marks which some of them had on their lower arms which might convey that they were members of secret societies.

As has been said these things do not seem in any way to have prejudiced the cases of the majority of the accused. In any event it is difficult to see what result would have ensued from concealing the fact that all the accused were regarded by the Government of Singapore as persons of bad character beyond producing a feeling of bewilderment in the minds of the jury who were, of course, well aware of the nature of the settlement and who, as were all the inhabitants of Singapore, were familiar with the general nature of the episode from which the trial arose, an episode which indeed at the time secured press publicity far beyond the bounds of Singapore and was dealt with not only by the whole of the Malaysian press but also by American and British newspapers. It is true that the accused were not necessarily persons who had been convicted for crime in a court of law. They were persons detained by the Executive Government by reason of the provisions of the Criminal Law (Temporary Provisions) Ordinance which have been mentioned and so perhaps their bad character was not so far beyond question as it would have been in the case of their having been convicted.

Nevertheless though the jury no doubt regarded them all as persons of bad character there

is nothing to shew that that in any way deterred the jury from doing their duty to judge them on the evidence alone. Indeed they were very much in the same position as were the English juries in the trials which followed on the Dartmoor Mutiny of the 1930's. And the fact that more of the accused were acquitted than were convicted is reasonably conclusive that the jury not only knew their duty but they did it.

Then on a number of occasions in the course of the trial the judge saw fit to interrupt counsel in the course of examination or cross-examination of witnesses and interposed questions and observations of his own. On this an argument was urged upon us based on the cases of *Yuill* v. *Yuill,*[10] *Clewer* [11] and *Jones* v. *National Coal Board* [12] that the appellants had had a trial that was less than fair.

We have examined the transcript with care and are satisfied that the judge's conduct, of which complaint has been made, has nothing in any way in common with what took place in the cases mentioned. What happened here was that there were eight different defending counsel; there was a great deal of overlapping in their cross-examination of witnesses; and in the heat of battle, so to speak, they occasionally overlooked the very real difficulties which arise from cross-examination in the English language through an interpreter of a witness who is giving evidence in one of the Chinese languages. This is a perennial source of difficulty and the great majority of the judge's interventions can be traced to his anxiety to assist in removing the difficulties of the sort which frequently arise in this regard, particularly when "double questions" are asked. These interventions, moreover, were not unduly numerous having regard to the length of the trial nor were they by any means confined to defending counsel; on a number of occasions prosecuting counsel was also interrupted. In all the circumstances we can see nothing in all this that could have affected in any way the question of the fairness of the appellants' trial.

Finally some complaint was made of an incident on the eighteenth day of the trial which really only affected the appellant Khoo Geok San (No: 8). Some days previously this man and another of the accused (who it is to be noted was ultimately acquitted) had been behaving in a peculiar fashion. The trial was adjourned for ten days to enable them to undergo observation at the prison and at the mental hospital and eventually the superintendent of the mental hospital came to the conclusion that they were both malingering, a conclusion which was accepted by the judge and apparently by counsel for the defence for no attempt was made to question it in any way.

When the trial was resumed a warder announced that the appellant Khoo Geok San, who was later said to have had a lumber puncture some three days previously, presumably in the course of his medical examination, felt sleepy and did not wish to sit up in the dock. On this the judge who clearly thought, in our view rightly, that the appellant's state of health had been adequately investigated ordered that he be strapped into his chair in an upright position. Later in the day this restraint became unnecessary and except that he then vomited on the floor of the dock he made no further complaints regarding his health. This episode may well have been unpleasant but we see nothing in it that could in any way have affected the fair trial of this appellant, still less of any of the others, although the judge at the commencement of his summing up took the precaution of impressing upon the jury that they should dismiss it entirely from their minds.

D. The Summing-up.

The remaining grounds of appeal which are of any substance relate to the way in which the case was summed up to the jury.

Before dealing with them, however, it will be convenient to consider the evidence.

Seventy-eight witnesses in all gave evidence for the prosecution. Twenty-five of these were police officers, photographers, surveyors, doctors and so forth. Their evidence was largely formal and was never seriously questioned.

The remaining fifty-three witnesses spoke to the events which occurred in the afternoon of 12th July. Twenty-eight of these were regular prison warders and settlement attendants and four were long sentence prisoners all employed in the administration of the settlement; twenty-one were detainees.

Their evidence, if it was believed, shewed that on 12th July, 1963, an episode of very great violence and disorder occurred on Pulau Senang, that a large number of people many of them armed with dangerous weapons took part in it and that in the course of it much damage was done to property and a number of people including the three persons whose death formed the subject of the charges were killed in circumstances which in the absence of anything to the contrary (and there was nothing) clearly amounted to murder. Again much of that evidence, if it was believed by the jury and accepted by them as supporting the inference, made out that many of the persons involved were pursuing a number of common objects which included the destruction of the settlement and the killing of all those in authority in it including Dutton, Singham and Tan.

That was the setting of the prosecution case

and it is not necessary to discuss in detail the evidence which went to make it out, for the truth is that as regards this part of the case the prosecution evidence was never contradicted. It is true that by constant and vigorous cross-examination counsel for the defence sought to minimise its weight. Nevertheless the fact remains that when the time came for the accused persons to make their defences out of the fifty-eight persons remaining in the dock only fourteen gave evidence on their own behalf, including two of the present appellants, and one made an unsworn statement from the dock. Of these not one denied the evidence of the prosecution witnesses as to the nature of the events which took place. All that each of them did was to deny the part that he himself was alleged to have played.

What does call for consideration in rather more detail is the evidence regarding the parts played in the episode by the individual accused and their alleged responsibility. Here, of course, we are not concerned with the evidence implicating those of the accused persons who were in the end acquitted for murder. With regard to the present appellants, however, the evidence, if it was believed, was in every case more than sufficient to support the convictions and, again if it was believed, can in most cases be described as overwhelming.

As regards the first appellant, Tan Kheng Ann, thirty witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a parang; he chased two detainees named Goh Kheng Wah and Quek Hai Cheng who were said to favour the authorities; he took part in charges against the offices; he threw bottles at the warders including Tailford, the deputy superintendent, who was badly injured; he attacked the deceased Dutton with his parang at the radio room; he helped to set fire to one of the stores and to the radio room; he attacked the deceased Singham with his parang, and he abused detainees who helped those injured. That was the evidence against him and none of it was denied.

As regards the second appellant, Chia Yeow Fatt, nine witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a metal rod; he chased three suspected informers at various times; he attacked Dutton; he was heard shouting: "Kill!" at the petrol pumps and at the main office. That was the evidence against him and none of it was denied.

As regards the third appellant, Cheong Wai Sang, twenty witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with an iron pipe; he chased informers; he attacked Tailford and the deceased Dutton; he threw bottles at the warders; he took part in the attack on the radio room and in the burning of the store; he chased the deceased Singham and an attendant Wang Loke Hai ("Cartoon"); he appealed to non-rioters to join the riot; with others he forced his way into the guard room. That was the evidence against him and none of it was denied.

As regards the fourth appellant, Somasundram, eighteen witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a stick; he threw bottles at the warders; he assisted in burning the store; he attacked the deceased Singham and the deceased Dutton, upon whom he poured petrol; he chased the deceased Tan Kok Hian; he attempted to break into the office with an axe; he abused detainees who were helping the injured Singham. His defence was a denial. When the trouble started he ran away and sat under a tree until the police came.

As regards the fifth appellant, Lee Tee Kang, twenty-four witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with an axe; he was shouting: "Burn the island!", he cut the cable connecting the electric generator with the siren which was the island's alarm system and the aerial of the radio telephone; he assisted in burning the store, in burning the settlement records and in breaking up the radio room; he attacked the deceased Singham; he poured petrol on Dutton; he threw bottles at the warders; he broke glasses in the kitchen; he attacked Tailford. That was the evidence against him and none of it was denied.

As regards the sixth appellant, Somasundarajoo, eight prosecution witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a parang; he assisted in burning the store and wrecking the radio room; he attacked the deceased Tan Kok Hian and the deceased Singham and the deceased Dutton. The defence, like that of Somasundram, was a denial. When the trouble started he ran to a big tree and waited until the police came.

As regards the seventh appellant, Lim Kim Chuan, sixteen witnesses gave evidence implicating him. Their evidence was to the effect that he was armed first with an iron rod and later with a parang; he attacked the deceased Dutton, the deceased Singham and the deceased Tan Kok Hian; he also attacked Tailford; he assisted in wrecking the radio room; he threw bottles at the warders. That was the evidence against him and none of it was denied.

As regards the eighth appellant, Khoo Geok San, twenty-one witnesses gave evidence implicating him. This evidence was to the effect that

he was armed with an iron rod; he attacked the deceased Dutton; he threw bottles at the warders; he took part in burning the store and in attacks on the offices and on the radio room; he appealed to non-rioters to join the rioters and abused those who did not do so. That was the evidence against him and none of it was denied.

As regards the ninth appellant, Chan Wah, eighteen witnesses gave evidence implicating him. Their evidence was to the effect that he had an axe and then a parang; he threw bottles at the warders; he appealed to non-rioters to join the rioters; he assisted in burning the store; he chased two alleged informers; he broke down the door of the guard room and office windows; he was seen fighting with the deceased Tan Kok Hian; he smashed the boxes which contained fire fighting equipment; he took part in the attacks on the office. That was the evidence against him and none of it was denied.

As regards the tenth appellant, Hoe Hock Hai, fourteen witnesses gave evidence implicating him. Their evidence was to the effect that at first he was armed with an axe and then with a pole; he took part in burning the store and in the attacks on the offices; he threw his axe at an attendant and threw bottles at the warders; he chased an alleged informer; he helped to break up the boxes containing fire fighting equipment. That was the evidence against him and none of it was denied.

As regards the eleventh appellant, Ponapalam, ten witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a hoe; he took part in burning the store; in wrecking the radio room and in breaking into the petrol pump; he took part in the attacks on the warders and threw bottles at them; he poured petrol on the deceased Dutton. That was the evidence against him and none of it was denied.

As regards the twelfth appellant, Chew Seng Hoe, the evidence was perhaps less than overwhelming. Nevertheless it was very strong. He had been detained in the punishment cells but was released on the morning of 12th July well before the trouble started. A settlement attendant saw him with many others attacking the main offices and a little later one of the prisoner-clerks saw him armed with a hoe handle striking repeated blows, apparently the fatal blows, on the deceased Singham. That evidence was not denied.

As regards the thirteenth appellant, Chew Thiam Huat, nine witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a hoe; he took part in burning the store and in attacking the radio room and the offices; he attacked Tailford; he threw bottles at the warders. That was the evidence against him and it was not denied.

As regards the fourteenth appellant, Sim Hoe Seng, seventeen witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with a hoe; he took part in burning the store and in wrecking the radio room; he took part in the attacks on the warders and threw bottles at them; he broke the door of the guard room; he attacked the deceased Tan Kok Hian. That was the evidence against him and it was not denied.

As regards the fifteenth appellant, Ng Cheng Chwee, eight witnesses gave evidence implicating him. The effect of their evidence was that he was armed with a hoe; he took part in the attack on the offices; he attacked the deceased Singham; he attacked the attendant Wang Loke Hai ("Cartoon"); he attacked Tailford both with his hoe and with a bottle. That was the evidence against him and none of it was denied.

As regards the sixteenth appellant, Tan Yin Chwee eight witnesses gave evidence implicating him. The effect of their evidence was that he was armed with a parang; he took part in attacking the office and in burning the store and the radio room; he was heard shouting: "Soot!" That was the evidence against him and it was not denied.

As regards the seventeenth appellant, Sim Teck Beng, seven witnesses gave evidence implicating him. Their evidence was to the effect that at different times he was armed with a hoe and an axe; he attacked the deceased Dutton; he took part in attacking the offices and in burning the store and the radio room. That was the evidence against him and none of it was denied.

As regards the eighteenth appellant, Cheng Poh Kheng, four witnesses gave evidence implicating him. Their evidence was to the effect that he was armed with an axe; he was seen running towards the offices; he attacked the deceased Dutton; he assisted in breaking into the petrol pump with his axe. That was the evidence against him and none of it was denied.

Now, in view of the nature and volume of so much of the evidence as related to the episode as a whole and of the consideration that it was in no way seriously contradicted it is difficult to suppose that any reasonable jury would have had any hesitation or difficulty in finding that the offences charged were committed. On the other hand, however, having regard to the confused nature not of the evidence but of the events to which it related — the number of people involved, the noise, the movement, the smoke and the flames — it was imperative in the interest of justice that the evidence which purported to

implicate each individual accused person should, even though not denied, be scrutinised with the most scrupulous care.

The trial judge clearly had these considerations in view in framing his summing-up which can well be described as admirable.

First he gave the customary directions as to the onus and quantum of proof in criminal cases and as to the respective functions of judge and jury. In particular, he made it very clear that on all questions of fact the decision lay with the jury and that any views the judge might express, though no doubt of interest and value, were not in any way binding on the jury. Then he explained the law in as simple terms as were compatible with accuracy, and I think it is right to say that so far as it related to the law as such this portion has not been criticised, although criticism has been directed to the way in which he said the law should be applied to the facts.

Finally, before coming to the evidence, he administered certain cautions, which will be dealt with later, regarding the way in which the evidence of accomplices and other witnesses of possible bad character should be approached.

He then turned to the evidence. And we should observe *in limine* that here neither counsel for the appellants nor our own critical examination has discovered any omission of or misstatement affecting any material point.

He went through the evidence twice in different ways. First he dealt with the evidence of the prosecution witnesses one at a time in what might be called chronological order, that is in the order in which the events to which they spoke occurred. With regard to each of them he related the substance of his evidence; he pointed out which of the accused it implicated and he pointed out the grounds, including, where appropriate, the bad character of the witness, on which it had been attacked.

He then dealt with the case for and against each of the accused. With regard to each of them he reminded the jury, briefly, of the evidence against him and in each case where there was a defence he reminded the jury what it was.

In our view this was not only an adequate but on the whole the best way of dealing with the case. The trial had gone on for a long time and however attentive the jury had been what was desirable was not to repeat uncritically the whole of the evidence that had been given (the transcript runs to over three quarters of a million words) but to extract and arrange its salient features. Indeed what was said falls well within the *desiderata* in a summing up thus stated by the English Court of Criminal Appeal in *R.* v. *Hanratty*:—[13]

> "this was a case lasting twenty-one days with over 100 witnesses and it would be remarkable if every item of the evidence and every point or comment made by counsel on either side were referred to by the judge. It is no part of a judge's duty to refer to all the evidence or to mention all the points taken and comments made. His duty is to present the case on each side fairly and impartially to the jury, concentrating on the vital issues in the case. In particular it is unnecessary for a judge to deal in detail with the points made as to the credibility of witnesses, or in other words to deal with cross-examination as to credit."

Before us the summing-up has been attacked with great vigour and at great length on a number of grounds. Some of these are of little substance and indeed come to no more than the usual complaint that it was not as favourable to the accused, or at any rate to the present appellants, as it might have been. The grounds which call for consideration can be dealt with under two heads.

The first of these was in effect that what might be called the framework of the case was inadequately presented to the jury. The second was that a number of matters relating to the credibility of certain classes of witnesses and individual witnesses were dealt with in an unsatisfactory manner.

With regard to the presentation of the case as a whole the complaints made can be summed up in the proposition that the case was put to the jury on the basis that there was a single assembly with a single combination of common objects as averred in the charges. And that this was wrong.

Now considered philosophically there may be substance in this argument. "The Devil alone knoweth the heart of man". Each of those who took any part in the events of 12th July may have had different thoughts in his heart, though none of them told the court what they were. Notionally there may have been many assemblies in the sense of groups of people who had the same thoughts as each other but different thoughts from those of the members of other groups. The composition of those notional groups may have varied from time to time, even from minute to minute, as changes in the hearts of their members took place. The thoughts of one group may have had something but not everything in common with those of any other group. Some individuals may have been inspired with animus against Dutton, some may have felt a general resentment against the fact and the conditions of their detention. Some may have premeditated the outbreak. Others may have been in ignorance of its likelihood and only adhered to it when it started or may for some reason or other lost taste for what was happening and at some stage or other dissociated themselves from it, a possibility that was in fact put

to the jury by the judge.

As regards premeditation there was no doubt that there was some premeditation; Dutton himself knew at the latest on the morning of 12th July that something was afoot and he sent a telephone message to the mainland and had the serviceable boats removed to a neighbouring island. It is to be observed in parenthesis, however, that the evidence as to the persons who took part in this premeditation, if it was believed, only implicated a few of the accused, and in any event this evidence, even in so far as it did implicate them, was not of great importance because there was no question of any charge of conspiracy.

As regards the general question of objects, the court was not concerned with motives and any philosophical discussion of motives and how far they are capable of being shared would have been out of place and would only have served to confuse the minds of the jury. What the court was concerned with was the alleged common object of a number of persons. And if a number of persons do the same acts voluntarily and consciously then, in the absence of anything which suggests that these acts are not done consciously and voluntarily, these acts must be regarded as evidence of the common object of the individuals who do them and, so far as the doing of these acts is concerned these individuals, must be regarded as a single assembly.

It was said by the Supreme Court of India in the case of *Sukha* v. *State of Rajasthan*:—[14]

> "a common object is different from a common intention in that it does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the people get there."

And in that connection we would adopt the following passage from *Gour's* "Penal Law of India" (7th Ed. at p. 710) :—

> "The purpose for which the members of the assembly set out or which they desired to achieve is the object. Each member may have an object in view and may also have his own idea of the means with which that object is to be achieved and the extent to which he is prepared to go for attaining it. If the object desired by all the members is the same, the knowledge that that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved; the object then becomes the common object of the assembly. Normally, a determination to achieve an object includes a resolve to meet with force any resistence to its attainment. A common object may be found by express agreement after mutual consultations but that is not necessary. It may be formed at any stage by all or some members of the assembly and the other members may join and accept it. It may be modified cr altered or abandoned at any stage. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined by keeping in view the nature of the assembly, the arms it carries and the behaviour of its members at or near the scene of the incident."

In the present case, having regard to the evidence, it was clearly in the interests of justice that the jury should have been asked to consider the whole affair on the basis of it being a single transaction. It was for them to say (and it was left to them to say) whether there was an assembly with the common unlawful objects averred by the prosecution. If there was not that was then the end of the matter. If they were satisfied there was such an unlawful assembly it was then for them to say in the case of each of the accused whether they were satisfied that at the material time he was a member of it.

Turning now to the grounds on which the judge's directions as to the credibility of the prosecution witnesses were attacked, it was said in the petition of appeal that his attitude to this question was based on the assumption "that all the prosecution witnesses, including a galaxy (*sic*) of self confessed criminals, were worthy of the utmost respect" and that he failed to give proper directions to the jury with regard to the evidence of such persons and in particular with regard to two witnesses who were alleged to be accomplices in the full sense. This is not right.

There were two prosecution witnesses (Quek Hai Cheng and Chong Sek Ling) who might or might not have been accomplices in the full sense of the word. That is to say there was evidence which if it was accepted shewed that they were active participants in the affair. There was also evidence which, again if it was accepted, shewed that they were not active participants.

Then there were numerous witnesses who were detainees, ex-detainees or long sentence prisoners. Most of them were or had been persons of bad character; some of them may have had personal grudges against the accused arising from antecedent secret society activities.

As regards the detainees it might be thought that all had a very strong motive to assist the prosecution because this might accelerate their release, a matter regarding which the authorities had a very wide discretion. Putting aside the consideration that give ordinary standards of human decency the authorities might have been likely to be more appreciative of truthful evidence than of untruthful evidence, for presumably they would wish the right people rather than the wrong people to be convicted, there was clearly a temptation here for individual detainees to be unduly emphatic in their evidence implicating their fellows in the dock and to avoid any suggestion that, to put it at the lowest, they might have had some sympathy with them.

The judge dealt with the matter in this way.

As regards the two putative accomplices (Quek Hai Cheng and Chong Sek Ling) he left the question of "*accomplice vel non*" to the jury.

This in our view was right (see *Davies* v. *Director of Public Prosecutions* [15]).

As regards witnesses who had previous criminal convictions or whose credibility had been attacked on individual grounds he reminded the jury of the grounds on which his evidence had been attacked as he discussed the evidence of each individual witness.

Generally as regards the accomplices and the detainees he treated them together. Here he clearly had in mind what was said in the case of *Prater*:—[16]

"it is desirable that, in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given."

What he said was this:—

"the evidence of those detainees, fellow-detainees of the accused and ex-detainees, as also the long-sentence prisoners, requires careful scrutiny, attention and examination. The law requires us to consider the evidence of those witnesses with care and with caution. In some instances they are members of rival gangs to those of which the accused, or some of them, are members..... you must consider the evidence carefully, because — and you will see the reason — it may be motivated by a desire for revenge or because of a grudge. You have heard some of the grudges alleged, members of the jury. Or to secure an early release for the witness. Or the witness may have some other purpose of his own to serve. In such cases, gentlemen of the jury, like the evidence of an accomplice, it would be dangerous to act or convict upon it unless you are absolutely satisfied as to its truth."

With that we can find no fault. What followed, however, regarding the nature of corroboration was at first sight less than satisfactory. It was this:—

"But that is all it means. It is always desirable in cases of this sort to test this evidence by reference to other independent evidence, circumstances or events to see whether they corroborate or support it, to see whether the evidence hangs together, to see whether there is a pattern to it, to see whether it is logical and follows the logical sequence of events and is consistent with those events. The evidence, of course, of one accomplice cannot be used to corroborate the evidence of another accomplice."

Every case, however, must be looked at in the light of its own facts and perhaps on reflection that statement is not so wrong as at first sight it appears to be; indeed it may well have been likely to convey a correct impression to the minds of the jury.

As has been seen the judge devoted most of his attention to the discussion of the evidence upon which the prosecution relied to implicate individual accused persons. In the first passage quoted he refers to the possible desire to earn release as a motive for giving evidence which might or might not be true to please the prosecution but he also refers to the possibility of the evidence of any individual witness being motivated by "a desire for revenge or because of a grudge". He then likens the evidence of such witnesses to the evidence of an accomplice and then says it must be tested by "reference to other independent evidence". If he had added the usual words of the formula "implicating the accused in a material particular" all would certainly have been well. Even as it is it seems only reasonable to accept it that the jury understood what he said as if those words had actually been uttered.

After all this is not the usual type of case where an accomplice, or the prosecutrix in a sexual case, is the only witness who gives a very full direct account of what the accused is said to have done and where there is a body of circumstantial evidence which has to be examined with a view to discovering just whether and if so how much of it really does corroborate the evidence of the principal witness in the sense that it implicates the accused in a material particular. This was a case where every one of the 53 of the prosecution witnesses who spoke to the events on the island on 12th July, 1963, gave evidence directly implicating one or more of the accused persons. In the circumstances it seems clear that where the jury were told to test the evidence of any particular witness by reference to other independent evidence they could only treat that as advice to test evidence implicating each of the accused by reference to independent evidence implicating the same accused as participating in the riot. On the basis that all the evidence implicated one or more of the accused that was the only way in which the judge's advice could be taken.

In any event even if the judge's direction on the point be wrong this is clearly a case where the proviso to section 60(1) of the Judicature Act should be applied for in our opinion it was a case where "no reasonable jury could have failed to convict" the appellants (*per* Viscount Simon L.C.; *Stirland* [17]). From the case of *Davies* v. *Director of Public Prosecutions, supra,* (at p. 399) it is clear that the proviso can be applied in cases like the present though the view has been expressed by the English Court of Criminal Appeal that generally (at any rate in sexual cases) where no warning as to corroboration has been given the proviso should not be applied (*Trigg* [18]). But it is to be noted that what they said was this:—

"In principle this court feels that cases where no warning as to corroboration is given where it should have been should, broadly speaking, not be made the subject of the proviso to section 4. There are cases where the evidence has been such that this court has felt it possible to apply the proviso, but those cases, in the view of this court must be regarded more as exceptional than as in any sense a regular matter."

Now at this stage it is to be observed that strictly speaking it only becomes necessary to consider the application of the proviso in the

case of the appellants who were affected by the evidence of either of the alleged accomplices Chong Sek Ling and Quek Hai Cheng for the rule requiring corroboration in a material particular implicating the accused has never been extended as a virtual rule of law to the evidence of witnesses of the sort described in *Prater, supra.* And after all such witnesses do not necessarily suffer from one of the defects which is said to make accomplice evidence so extremely unreliable, that is that the accomplice is peculiarly equipped by reason of his inside knowledge of the crime to convince the unwary that his lies are the truth (see *Bereng Griffith Lerotholi* v. *The King* [19]).

In the present case that consideration did not apply. As far as the actual facts of the tumult went nobody had any special "inside knowledge"; everything was done in broad daylight for all to see. The evidence against each of the appellants has already been described and need not be recapitulated. To what has been said it is only necessary to add that the evidence of the alleged accomplice Chong Sek Ling only implicated eight of the appellants (Nos. 1, 2, 3, 5, 9, 10, 13 and 18), that the evidence of the alleged accomplice Quek Hai Cheng only implicated seven of them (Nos. 1, 7, 9, 10, 12, 15 and 18) and that in the case of each of the appellants with the exception of Cheng Poh Kheng (No. 18) there was at least one among the numerous witnesses who gave direct evidence against him who was a member of the ordinary prison staff or a civilian employee and of unblemished character. Even in the case of Cheng Poh Kheng in addition the evidence of Chong Sek Ling and Quek Hai Cheng there was the evidence of two other detainees, and it was not even suggested that either of them had any personal animus against him.

Having given our most anxious consideration to the case we are satisfied that there has been no miscarriage of justice, so far at any rate as the present appellants are concerned, by reason of any error in the direction as to corroboration.

Or, we would add, for any other reason.

The appeals are dismissed.

Appeals dismissed.

Solicitors: *David Marshall.*

YAP BOR LIM v. CHIA THYE POH & ANOR.

[O.C.J. (Winslow J.) May 7, 1965]

[Singapore — Suit No. 1590 of 1964]

Libel — Political campaign — Quantum of damages.

The defendants admitted publishing a libel on the plaintiff and submitted to the judgment of the court in regard to the question of damages and costs. It was argued for the defendants that the publication in question was made without malice, though hastily and on information from a reliable source and that in all the circumstances damages should be nominal. The plaintiff on the other hand claimed that the libel was made recklessly and with malice.

Held: the statement was published as part of a political campaign to discredit the political opponents of the defendants and it cannot be held therefore that nominal damages would suffice.

Damages were awarded in the sum of $5,000 to be reduced to $3,000 if a satisfactory apology was published.

CIVIL SUIT.

Chua Sian Chin for the plaintiff.

T. T. Rajah for the defendants.

Cur. Adv. Vult.

Winslow J.: The first defendant in this case who is and was, at the time of publication of the libel, the editor of the Chinese edition of the *Barisan,* the organ of the Barisan Sosialis, and the second defendant, the Barisan Sosialis, do not contest the issues of fact involved relating to the falsity of the libel and submit to the judgment of this court so far as concerns the quantum of damages, costs and any possible injunction to restrain repetition of the libel in question.

In August 1964 the first defendant published an article in the Chinese edition of the *Barisan* which has now turned out to be obviously libellous in that it was then based on incorrect and untrue information which he received from one Ng Seng Wah in whom he placed complete reliance. As a consequence he considered it unnecessary to check its veracity. The said Ng Seng Wah was then an undergraduate at Nanyang University who took an examination there at the same time as the plaintiff whom he reported to the first defendant as having sat the examination in the name of a female student. It was only in April 1965 that he realised, according to his evidence, that the information supplied to him by Ng Seng Wah was both incorrect and untrue.

In order to appreciate the gravity or otherwise of the first defendant's conduct in relation to this admitted libel, it is pertinent to refer to the conditions alleged to be prevailing within the precincts of Nanyang University prior to the publication of the libel.

This university is alleged to have been the seat of political manipulations on the part of its student population for some considerable time by both pro-communist and non-communist adherents. It is alleged that the pro-communists were at one time, through the Nanyang University Students' Union, attempting to direct the affairs of the university against the interests of the students. In 1964, it is alleged that the Nanyang University Students' Fellowship, with the plaintiff as chairman, was formed to counter